IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

CRL.A.No. 1946 of 2003()

SC.291/2000 of ADDITIONAL SESSIONS COURT (ADHOC), FAST TRACK COURT-I, MANJERI

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APPELLANT:

RAJAN, S/O KUTTAN,
SRAMBIKKAL HOUSE,
PERINTHALMANNA AMSOM DESOM,
PATTAMBI ROAD.

BY ADV. SMT.K.V.RESHMI

RESPONDENTS:

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1. THE SUB INSPECTOR OF POLICE,
PERINTHALMANNA POLICE STATION.

2. THE STATE OF KERALA, REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI PUZHAKKARA MUHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A.No.1946 of 2003 (D)

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Dated this the 27th day of March, 2007

J U D G M E N T

The accused in S.C.No.291/2000, on the file of the Additional Sessions Court, (Ad hoc), Fast Track Court-I, Manjeri, is the appellant. He was found guilty of the offence punishable under Section 55(a) and 55(h)of the Abkari Act, in short 'the Act'. The appellant-accused was, therefore, convicted and sentenced to undergo rigorous imprisonment for five years and pay a fine of rupees one lakh, in default to undergo simple imprisonment for one year. The same is under challenge through this appeal.

2. The prosecution case in brief is that, PW.1, the Sub Inspector of Police, Perinthalmanna Police Station, had received reliable secret information that Indian made foreign liquor was being sold, unauthorisedly, in the milk booth of the appellant. Therefore, PW.1, along with PW.2 and others, went to the milk booth of the appellant, on 03/06/1997, at about 7.55 p.m. He conducted a search. He seized 12 bottles of Indian

made foreign liquor and MO.2 series glass and steel plate. He also found about three persons, sitting on the bench and drinking liquor. PW.1, therefore, arrested the appellant, seized the contraband as well as MO.2 series, and prepared Ext.P1 seizure mahazar, attested by PWs.3 and 4. PW.1 had taken three samples of the liquor, Bell XXX rum, and sent the same for chemical analysis. Ext.P7 is the chemical analysis report. It shows that the samples contain 42.48, 42.37 and 42.48 percentage by volume of ethyl alcohol. PW.6 investigated the case. PW.5 is the attestor to Ext.P5 scene mahazar. PW.6 filed the final report on completion of the investigation. Ext.P1 seizure list reveals that 12 bottles were seized, which includes three items of specimen samples.

3. The defence contention is that the prosecution established that only 1.400 litres were tested and proved as Indian made foreign liquor, XXX rum, and, therefore, it was within the permitted quantity. Hence, in the light of the authority in **Krishnankutty vs.State of Kerala** [2005 (3) KLT 568], the apellant had not exceeded the permitted quantity, as

per the law. Therefore, prayed that the appellant may be acquitted.

4. I have gone through the evidence available on record. Conducting of the milk booth, by the appellant, is established even through the hostile witnesses. Ext.P5 scene mahazar clearly describe the milk booth of the appellant. PW.4 has stated that he was in front of the shop for buying articles. Thus, the evidence show that there was a milk booth, and the further materials on record clearly establish that there was seizure of Indian made foreign liquor, unauthorisedly, kept by the appellant. He also sold the same.

5. The learned counsel for the appellant, however, submitted that the persons those who were found sitting on the bench, when PW.1 reached the occurrence, were not cited and examined. But PW.1 deposed that the appellant and the witnesses alone were at the shop at that time. PW.3 denied that he was a regular visitor to the shop of the appellant for drinking liquor. In Ext.P1, item No.8 is a plastic measurement glass, of 8.5 cms height, for drinking; item No.6 is a steel plate of 26 cms

diameter. When I appreciate the entire material, it is clear that PW.1 was selling liquor, unauthorisedly, and he possessed liquor for the said purpose of sale.

6. There had been contentions before the trial court as well as before me that there was no booth as such, and there was no seizure, as alleged by the prosecution. But the evidence of PW.4, as well as the other witnesses, clearly show that the booth was conducted by the appellant. Seizure also is proved. Though PWs.3 and 4 turned hostile, they have signed Ext.P1 seizure mahazar. That evidence also further reveal that the signature was affixed, from the side of the road. They turned hostile because of the influence of the appellant, who is a man from that local area. Therefore, I hold that the prosecution has established a case under Section 55(a) of the Act.

7. In view of the facts that are stated above and discussed, and in the light of the submissions made by the learned counsel for the appellant, I hold that the accused-appellant is guilty of the offence punishable under Section 55(a) of the Act. Therefore, I sustain the conviction.

8. The learned counsel for the appellant submitted that the sentence is very high and harsh. Therefore, prayed that the sentence may be modified and reduced.

9. However, in the light of the various facts that are submitted by the learned counsel for the appellant, I modify and reduce the sentence from rigorous imprisonment for five years to rigorous imprisonment for six months. I sustain the fine of rupees one lakh. However, I reduce the default sentence of fine, to simple imprisonment for three months.

The appeal is partly allowed, as above.

(J.M.JAMES)
Judge

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